HUNGARY

TRADE SUMMARY

The U.S. trade deficit with Hungary was $1.4 billion in 1999, an increase of $304 million from 1998. U.S. exports to Hungary were $503 million in 1999, an increase of $21 million (4.3 percent) from the previous year. Hungary was the United States' 64th largest export market in 1999. U.S. imports from Hungary were $1.9 billion in 1999, an increase of $324 million (or 21 percent) from the same period in 1998. The stock of U.S. foreign direct investment in 1998 was $1.4 billion, a 14 percent increase from 1997.

IMPORT POLICIES

Hungary's current trade policies are shaped primarily by its World Trade Organization (WTO) commitments and – increasingly – by the likelihood that Hungary will become a full member of the European Union (EU) within several years. Hungary has concluded a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries and the Central European Free Trade Agreement (CEFTA) countries. In accordance with its commitments in the Uruguay Round, Hungary's average most-favored-nation (MFN) import duties have been cut from 13.6 percent in 1991 to 8 percent in 1998.

Hungary has eliminated almost all of its import license requirements. Currently, almost 96 percent (by value) of products can be imported without an import license. A license is required to import precious metals, military goods, and certain pharmaceutical products. The progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Under these agreements, Hungary must eliminate import quotas on textiles, clothing, and other industrial products by 2004. In 2000, Hungary is scheduled to end the practice under the Customs Duty Law of 1995 of barring the importation of used cars more than six years old. After January 1, 2000, the determining factor for used car imports will be adherence to EU environmental standards, to be determined by emissions testing and inspection. This should make it easier to import some older U.S. models.

Under Hungary's Association Agreement with the EU, tariffs on industrial products from the EU will be completely phased out by the end of 2001. Also, these preferential trade agreements provide for reduced tariffs rates on some non-industrial products on a selective basis. U.S. products, which are subject to Hungary's MFN rates, often encounter a significant tariff differential when competing against EU products, which enter duty-free or at preferential rates. Several U.S. exporters (e.g., of aircraft, autos, electrical generating equipment, small engines, chocolate and non-chocolate confections, distilled spirits, wine, commercial laundry equipment, and soda ash) have expressed concern over the tariff preferences provided to the EU by Hungary because of the growing disparity with MFN rates. Hungary applies a high MFN duty of 68 percent *ad valorem* on imported alcoholic beverages and 33-72 percent *ad valorem* MFN duties on chocolate and confectionery products.

Hungary's MFN rates on industrial products are generally higher than the EU's common external tariff (CXT) rates, and so joining the EU, which would require Hungary to adopt the EU's CXT rates, would benefit U.S. exporters of industrial products. Adopting the CXT would likely have a negative impact on some U.S. agriculture exports where the EU's CXT rates often exceed Hungary's MFN rates. The United States has been urging Hungary to reduce its high MFN tariff rates down to the EU's CXT levels prior to EU accession. The United States and Hungary are engaged in discussions on how to address this tariff differential problem. There is currently a tariff waiver (valid until the end of 2000) on the leasing or purchase of aircraft by Malev Hungarian Airlines (majority government-owned). Malev's fleet of large passenger jets currently consists of leased Boeing aircraft that are due to be replaced in a few years.

Under the Pan-European Cumulation system and Pan-European Free Trade Zone, effective in Hungary since July 1, 1997, customs duties on the imported content of goods subsequently exported under preferential trade agreements are no longer refunded. However, content from any member state can accumulate to qualify for preferential treatment. Duties and fees on re-exported content are no longer refunded as of July 1, 1997 for non-EU importers. This change has adversely affected certain U.S. industries (e.g., lumber and veneer producers). Firms exporting from Hungary with inputs from non-WTO members (such as Russia) were faced with greater costs and additional customs fees. Fees imposed on goods coming from non-WTO states are scheduled to be eliminated beginning in 2000. U.S. firms producing for export from Hungary using imports (e.g. auto parts manufacturers) have complained that the refund of the customs duties and fees due them on these "imports for re-export" have been slow in coming, resulting in the tying up of large sums of money.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Importers must file a customs document with a product declaration and present Hungarian certified documentation from the Commercial Quality Control Institute upon importation. This permit may be replaced by other national certification and testing agency documents, such as those of the National Institute for Drugs. Some Hungarian standards are reciprocal with those of recognized U.S. standards.

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. In 1998, United States and other exporters of bovine semen secured modification of restrictive practices and fees on imports affecting a potential market of $1 million per year for U.S. firms.

In 1998, Hungary adopted legislation governing genetically modified organisms (GMOs) in agriculture. These laws, in line with EU law, impose import restrictions that primarily affect new plant varieties. The Ministry of Agriculture requires a multi-year registration procedure and final approval for field trials rests with a mixed committee, which includes both scientists and environmentalists. Although the market for seed imports is relatively small (estimated $18 million in 1998), U.S. firms in Hungary produce seed and plant stock for other markets. U.S. industry estimates that full liberalization of the GMO policy could mean additional U.S. exports in the $10-25 million range.

GOVERNMENT PROCUREMENT

Foreign access to government-funded construction and service or supply contracts is regulated by the 1995 Act on Public Procurement, which improved transparency. Tenders must be invited for the purchase of goods worth over 10 million Hungarian forints and for the purchase of services worth over five million Hungarian forints (as of January 2000, 250 forints equals one dollar). However, bids with more than 50 percent Hungarian content are considered equal to majority-foreign bids that are up to 10 percent lower in price. Purchases deemed to be related to state security, as well as purchases of gas, oil, and electricity, remain exempt from these regulations. Some U.S. firms have taken legal action against non-transparent and procedural irregularities in government tenders.

Although Hungary is not yet a signatory to the WTO Agreement on Government Procurement (GPA), it was a co-sponsor, along with the United States and Korea, of a proposed agreement on Transparency in Government Procurement Initiative submitted to the WTO Secretariat in 1999. Hungary has the status of an observer to the WTO's GPA, and it would have to become a signatory in order to join the EU.

EXPORT SUBSIDIES

While Hungary's agricultural export subsidies remain in excess of its original Uruguay Round commitments, the Hungarian government is gradually phasing out excess subsidies. The Hungarian Government has undertaken not to use subsidies to penetrate new export markets, in accordance with an October 1997 agreement with the United States and other petitioning members of the WTO. Fellow CEFTA member states contend, however, that Hungary's agricultural subsidies are still too high, citing the examples of grains and pork.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hungary's intellectual property rights (IPR) laws are adequate in most respects. However, criminal enforcement, particularly in connection with copyright piracy, needs to be strengthened substantially. Piracy of audiovisual works and computer programs has decreased, but remains a serious problem.

In addition, Hungary's protection of patents needs to be improved. Hungarian patent protection was strengthened following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993. Under this agreement, Hungary agreed to grant patents on pharmaceutical products, unlike the previous law in which patents were granted only on processes for producing pharmaceuticals. The bilateral IPR agreement provides transitional pipeline protection for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary, enjoyment of patent rights regardless of whether patented products are imported or locally produced, and limitations on the use of compulsory licenses.

The limited protection for confidential test data submitted to obtain marketing approval of pharmaceuticals raises concerns that Hungary may not be meeting its obligations under Article 39.3 of the TRIPS Agreement. The Hungarian Government recognizes that it will have to adopt strict data exclusivity rules in order to become a member of the EU, but it has requested a five-year transition period to do so. Current Hungarian patent law does not explicitly recognize the importation of a patented product as meeting the "working the patent" requirements in the law, which could open the door for compulsory licensing of a patent where a product is not locally produced.

Persistent problems in the Hungarian judicial system continue to hinder protection of patent rights. In 1997, the Hungarian government strengthened access injunctions and attempted to reduce the backlog of court cases. However, this action did not affect ongoing IPR disputes, including a long-standing patent infringement suit by a large U.S. pharmaceutical firm. U.S. interests have not been able to obtain injunctive relief prohibiting the marketing of products that the courts have deemed to be infringing. The lack of relevant technical expertise in the courts can result in patent infringement cases taking three or more years to reach conclusion. Penalties awarded in such cases are considered too low to act as effective deterrents.

Hungarian copyright laws largely conform to international standards, but piracy is a serious problem. Video and cable television piracy is widespread; local television and cable companies regularly transmit programs without authorization. The Motion Picture Association (MPA) estimates that 55 percent of videotapes circulating in 1998 were pirated (down from 85 percent in 1993), and that in 1999 the level of unauthorized programming is 45 percent and the level of pay television signal theft is at 60 percent. The MPA calculates that the U.S. motion picture industry suffered $22 million in lost revenues in 1999 due to audiovisual piracy in Hungary.

Hungary's copyright laws were strengthened during 1999 by the passage of the Copyright Act, which entered into force on September 1, 1999. This law amended the 1994 Act on Enforcement of Judicial Decisions, streamlining the procedure for the enforcement of judicial decisions in all copyright infringement cases. Judges continue to be trained on copyright issues, and programs for judges and prosecutors on copyright and related rights have been established.

The Copyright Act, however, does not expressly provide for civil *ex parte* searches, though the Hungarians assert that such procedures are available under the Civil Procedure Act. The U.S. software industry is now testing whether these alternative procedures provide an adequate means for obtaining civil *ex parte* searches.

In May 1993, Hungary added stiff penalties for copyright infringement to its penal code. Since then, piracy of audiovisual works and transmissions has been driven underground. The 1999 Copyright Act permits compulsory licensing by cable and pay service operators of any film or program received in Hungary, so long as a fee is paid to the state copyright agency. U.S. film producers, although entitled to a share of these fees, report that they did not receive any revenues in 1999.

On the software side, the Business Software Alliance has estimated that 57 percent of the software used in Hungary is unlicensed, with a $38 million loss of revenues due to piracy in 1998. The Budapest Police created an Economic Crime Department in February 1998. They have investigated a number of high-profile cases and some have been brought to court, but the resulting jail terms and fines have been small, amounting only to payment of the value of the pirated software. Employers can now exercise all economic rights with respect to software created by employees, and all economic rights concerning software will be fully transferable.

SERVICES BARRIERS

Public television is required to fill 70 percent of its airtime with European production, of which at least 51 percent must be Hungarian, excluding advertising, news, sports, game and quiz shows. Hungarian film quotas in the 15 to 20 percent range apply to public television. These quotas in practice are not seen as cutting actual U.S. market share but they are more restrictive than required for EU membership. For private broadcasters, the 1995 Media Law reserves 15 percent of program time for Hungarian programs, excluding films. In selling licenses for two private national television frequencies in 1997, the National Radio and Television Board (ORTT) mandated a European quota of 50 percent of total annual program time, excluding advertisements, news, sports, and game shows (Hungarian content quotas apply as well). However, U.S. feature films and television productions retain a strong presence, especially in prime time. A revision to the 1995 Media Law is on the schedule for debate in parliament in early 2000. The new law is intended to harmonize Hungary's broadcast regime with EU directives on content and quotas (over 50 percent of both public and private TV broadcasting will have to be European programming).

Sales of U.S. air and ground services in Hungary are limited; the United States and Hungary do not have a bilateral "Open Skies" civil aviation agreement. Talks are currently underway concerning the plan for Budapest's international airport, Ferihegy, and the future of Malev, the national airline. A $250,000 grant from the U.S. Trade Development Agency is financing a feasibility study, to be completed before the end of 2000, of the development of Ferihegy into a regional hub. The Hungarian Government is looking for a "strategic partner" for Malev, and wants it to join a worldwide alliance, which may provide the opening necessary for an Open Skies agreement.

Under legislation passed in 1998, Hungary introduced restrictions on foreign lawyers and law firms, including requiring foreign legal practitioners to associate with a Hungarian lawyer or law firm. This has produced so-called "cooperative agreements" between Hungarian and American firms in order to provide clients both Hungarian and international legal advice. A person cannot provide foreign legal consultancy services nor legal advice on foreign or international law without being licensed in the practice of Hungarian law.

Audits must be conducted by a Hungarian-certified accountant. This individual may work for a foreign-owned firm. There is a nationality requirement for licensing of architects and engineers.

Foreign nationals may be licensed as architects and engineers, but they must first have their degrees examined for equivalence by Hungarian authorities. They may be required to sit for qualifying exams in some cases. They must then be registered legally and join the local chamber of architects and engineers. Audits must be conducted by Hungarian-certified accountants. Such individuals may work for foreign firms.

A 1998 decree restricts distribution of products by direct selling. This decree prohibits the direct selling of certain products, such an therapeutic substances not classified as pharmaceutical products and foodstuffs. It also imposes a requirement that distributors obtain a vocational training degree. This impedes access to the Hungarian market for U.S. direct sellers.

In the telecommunications sector, Hungary has committed to allow unlimited competition by the end of 2002 as part of the WTO Basic Telecommunications Services Agreement. The awarding of monopoly telephone concessions (including to U.S.-owned firms) during privatization has delayed the introduction of full competition until the end of 2002. The privatization of MATAV, the Hungarian telecommunications company, was completed in March 1999. MATAV has a monopoly on long distance and international public switched service until the end of 2001, and the local telephone operators have monopoly rights for local services until November 2002.

INVESTMENT BARRIERS

Hungary's commitment to privatization of large state enterprises has made it a leading recipient of foreign direct investment (especially U.S.) in Central Europe. Hungary has progressively reduced state ownership in "strategic" enterprises from 50 percent to 25 percent to a single golden share, with veto rights in some cases. The privatization of the Hungarian national airline, Malev, is currently under consideration, with the State Privatization and Holding Company planning to maintain a "25 percent plus one share" stake for the Hungarian Government.

Under the Media Law, a broadcaster must be at least 26 percent Hungarian-owned, and no entity – foreign or domestic – may hold in excess of 49 percent of the company. Further, the Media Law prohibits a person or firm holding a controlling interest (25 percent or more) in both a national newspaper and a national broadcaster. Similar restrictions limit cross-ownership in regional newspapers.

Government delays in approving energy price increases have repeatedly prevented U.S. and other foreign firms from realizing the eight-percent returns guaranteed in energy privatization contracts. In December 1999, the Hungarian government announced gasoline and electricity price increases effective January 2000, but the issue will remain unresolved until foreign investors and the government agree on a new regulatory framework and pricing mechanisms for the energy sector. Gasoline and energy prices were raised at the end of 1999, but still lag behind expectations by foreign investors in the sector. Natural gas, 75 percent of which is imported from Russia, is due to rise in price in June 2000. Complete liberalization of the natural gas market is now expected before Hungary's accession to the EU, possibly as early as 2002.

Since 1994, Hungary has offered targeted tax incentives for investment (replacing blanket incentives) based on export promotion, reinvestment of profits, and job creation in areas of high unemployment. More recent tax incentives target investment to depressed areas of the country, chiefly the northeastern Hajdu-Bihar, Nograd, Borsod-Abauj-Zemplen and Szabolcs-Szatmar-Bereg counties. In 1998, the government implemented a ten-year corporate tax break to companies investing at least Hungarian forints 10 billion ($40 million), creating 500 or more jobs. If the investment takes place in an economically depressed region, the minimum investment is Hungarian forints three billion ($12 million). Recent tax incentives targeting investment to depressed areas of the country require the creation of more than 100 jobs. There is now also a provision for a five year, 50 percent corporate tax break for investments of more than Hungarian forints one billion ($4 million).

OTHER BARRIERS

Although bribery does not appear to be any worse than in other parts of Europe, transparency remains an issue in business dealings. Some U.S. firms complain of inappropriate influences in government tenders.

The U.S. distilled spirits industry contends that Hungary's excise taxes discriminate against imported whiskey, vodka, rum and liqueurs in favor of domestically produced fruit brandies and eaux de vie, in violation of GATT Article III, paragraph 2. Hungary raised excise taxes on all alcoholic beverages in 1999, but continued to apply higher excise taxes to the types of liquors imported from abroad (whiskey, vodka, rum) than on the locally produced varieties (liquors derived from fruits). The U.S. Government has been consulting with the Hungarian Government on ways to improve market access for U.S. distilled spirits producers.

Many firms operating in Hungary are caught unaware by shifts in government policy due to insufficient government consultation with business interests. In other cases, the exceptional autonomy of the judicial system and of the National Radio and Television Board (both products of Hungary's transition to democracy) sometimes leads to decisions inconsistent with an overall government policy of promoting economic openness. In addition, complaints have been registered with the U.S. Government concerning inconsistent implementation of customs regulations and procedures when exporting to Hungary.

Privatization and the entry into the Hungarian market by multinational companies have greatly increased competition in many sectors. Some key infrastructure sector monopolies (broadcast transmitter Antenna Hungaria, electricity wholesaler MVM, state railways MAV, and Malev airlines), however, remain state-owned and receive special consideration from the Hungarian government.